

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ALLAN L. HENON,

Plaintiff, Civil No. 05-738-PK

vs.

ORDER

JO ANNE B. BARNHART,
Commissioner, Social Security
Administration,

Defendant.

REDDEN, Judge:

Magistrate Judge Papak filed his findings and recommendation on January 13, 2006, recommending that the matter be remanded to the Commissioner so she may reconsider plaintiff's request to reopen his 1998 claim.

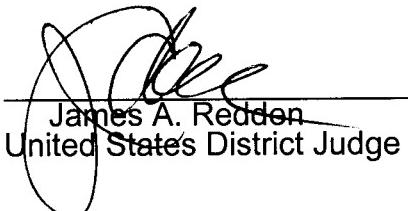
The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure. When a party objects to any portion of a magistrate judge's findings and recommendation regarding the disposition of any motion excepted in subsection (b)(1)(A), the district court must make a de novo determination of the specified proposed findings or recommendation to which objection is made. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Defendant has timely filed objections. I have, therefore, given the file of this case a de novo review. I agree with Judge Papak's conclusions. It is clear Judge Papak lacked jurisdiction to consider the merits of plaintiff's claim of entitlement to Social Security benefits. However, Judge Papak properly construed plaintiff's complaint as encompassing an appeal from the Commissioner's refusal to reopen plaintiff's 1998 claim for benefits. Defendant agrees that plaintiff had timely filed his motion to reopen the case within four years of the July 1, 1999, notice of initial determination, and that the Appeals Council erred as a matter of law in refusing to consider evidence supporting the motion. Based on this background, Judge Papak properly concluded the Commissioner must reconsider her decision not to reopen plaintiff's 1998 claim.

Therefore, I ADOPT the Magistrate Judge's findings and recommendation (doc. 16) that the matter be remanded to the Commissioner so she may reconsider plaintiff's request to reopen his 1998 claim.

IT IS SO ORDERED.

Dated this 8 day of February, 2006.



James A. Redden
United States District Judge